

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
San Francisco, California

Issue Date: 07 July 2023

OALJ No.: 2022-STA-00022
OSHA No.: 3-3500-21-054

In the Matter of:

PETER HILL,
Complainant,

v.

DAILY EXPRESS INC.
& ERIC BREHM,
Respondents.

**DECISION AND ORDER APPROVING SETTLEMENT
AND SEALING SENSITIVE MATERIAL**

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, and the implementing regulations found at 29 C.F.R. Part 1978. This matter is not currently set for hearing.

On June 27, 2023, Complainant filed an Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice. The parties submitted their Settlement Agreement and General Release (“Settlement Agreement”), in redacted and unredacted form.

The parties’ signed Settlement Agreement, finalized on June 26, 2023, resolves all issues pending for hearing in this matter. I have reviewed the unredacted Settlement Agreement as well as the proposed redactions. Pursuant to 29 C.F.R. § 18.85, which requires that I make findings in support of an order to seal sensitive material, I find that the redacted portions of the Settlement Agreement contain sensitive and confidential commercial information, to wit, the financial details of the settlement between the parties. The redactions amount to three numbers in a 8-page, 22-paragraph settlement agreement. Redaction of this material balances the parties’ interests in keeping these details confidential, so as to further the interests of settlement in this case, and the public’s interest in the operation of the administrative adjudicative system with respect to whistleblower case complainants and respondents. *See Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (citing cases) (discussing reasons for public access to court records).

At any time after the filing of objections to the Assistant Secretary’s findings, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge. 29 C.F.R. § 1978.111(d)(2). A copy of the settlement shall be filed with the ALJ. *Id.* Any settlement approved by the administrative law judge will constitute the final order

of the Secretary and may be enforced in the appropriate United States District Court. 29 C.F.R. § 1978.111(e).

The Settlement Agreement includes a general release of liability which resolves matters and potential matters under a multitude of state and federal laws other than the STAA. My authority over settlement agreements is limited to the statutes within my jurisdiction, and I have restricted my review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this STAA case. *Mann v. Schwan's Food Company*, ARB No. 09-017, ALJ No. 2008-STA-00027, slip op. at 3 (Dec. 31, 2008). Accordingly, my approval extends only to the terms of the Settlement Agreement pertaining to Complainant's STAA case.

The Settlement Agreement also included a confidentiality provision agreed to by the parties. The files maintained by this Office, including this Settlement Agreement, are subject to disclosure under the provisions of the Freedom of Information Act ("FOIA"), unless an exemption applies. 5 U.S.C. § 552; *Johnson v. U.S. Bancorp*, ARB No. 13-014, 13-046, ALJ No. 2020-SOX-00037, slip op. at 3 (ARB July 22, 2013). The Department of Labor has implemented regulations that govern the FOIA process, and exemptions are determined at the time of the request, not at the time of the filing of the agreement. *See* 29 C.F.R. Part 70; *McDowell v. Doyon Drilling Servs., Ltd.*, ARB No. 97-053, ALJ No. 96-TSC-00008, slip op. at 2 (ARB May 19, 1997).

As construed, and after carefully considering the terms of the Settlement Agreement, I find that the terms and conditions appear to be fair, adequate, and reasonable. I further find that the Settlement Agreement is not contrary to the public interest. *See Carciero v. Sodexho Alliance, S.A.*, ARB No. 09-067, ALJ No. 2008-SOX-012, slip op. at 3 (ARB Sept. 30, 2010).

Complainant's Unopposed Motion is GRANTED. The terms and conditions of the Settlement Agreement are incorporated by reference into this Decision and Order and are hereby adopted and approved. The parties are ordered to carry out the provisions of the Settlement Agreement.

It is ordered that the redacted portions of the Settlement Agreement are sealed as sensitive material under 29 C.F.R. § 18.85 based on the above findings. An electronic copy of the redacted Settlement Agreement shall be filed in the OALJ public filing system, appended to this Decision and Order. The electronic version of the unredacted Settlement Agreement shall be maintained in the designated OALJ non-public electronic system.

The parties have resolved all the issues pending for hearing; the matter is now fully concluded. All dates are vacated. The matter is closed.

SO ORDERED.

EVAN H. NORDBY
Administrative Law Judge